ROKIAH HJ. DOM

v.

ASSOCIATED PRIME UNDERWRITING MANAGER SDN. BHD. & ORS.

HIGH COURT MALAYA, SEREMBAN
MUSTAPHA HUSSAIN J
[SUIT NO. 667 OF 1985]
29 APRIL 1987

INSURANCE: *Action to recover judgment sum under s. 80 of Road Traffic Ordinance 1958 - Whether plaintiff entitled to recover - Defendant alleged that plaintiff fell within the exceptions to the Policy of Insurance - Whether the plaintiff was injured in the course of employment when injured.*

The plaintiff was injured whilst travelling in a van belonging to her employer as a passenger which was insured with the defendants. The plaintiff sued the driver and the insured but withdrew the action against the insured later, for injuries suffered by her, *vide* Seremban High Court Civil Suit No. 231 of 1980 and obtained judgment in her favour against the authorised driver of the van. The notice of commencement of proceedings had been given to the defendants. The defendants refused to pay the judgment sum to the plaintiff and the plaintiff sued the defendants to recover the judgment sum under s. 80 of the Road Traffic Ordinance 1958.

The defendants contended that the plaintiff was being carried in the van in the course of her employment and as such the defendants were not liable to indemnify the insured for the judgment obtained by the plaintiff against the authorised driver relying on Exception [ii] of the said policy. The defendants also contended that as the plaintiff was not a passenger carried by reason of or in pursuance of her proviso to Exception [iii] and therefore they were not liable to indemnify the plaintiff.

Held:

[1] The plaintiff at the time of the accident was travelling in the van as a passenger by reason of or in the pursuance of her contract of her employment and as such the injuries sustained by the plaintiff were not arising out of or in the course of her employment and was not caught by Exception [ii] of the policy.

[2] It was also clear that the plaintiff from the evidence, sustained the injuries while she was travelling in the motorvan in pursuance of her contract of employment and as such the plaintiff falls within the proviso to exception [iii] of the said policy.

[3] Further there was evidence that the plaintiff was injured whilst she was just outside of the van and in such an event the defendants would still be liable as the plaintiff's claim comes within the meaning of a third party.

[Judgment for the plaintiff with costs.]

Cases referred to:
St. Helens Colliery Company Ltd. v. Hewitson [1924] AC 59
McSteen v. McCarthy [1952] NI 33 IR

Legislation referred to:
Road Traffic Ordinance 1958, ss. 80, (1)

JUDGMENT

Mustapha Hussain J:

The plaintiff, a labourer working for Seng Fatt Land Development Sdn. Bhd. (insured) sustained injuries while travelling as a passenger in motor van No. MF 2908 owned by the insured and driven by Tai Gee Seem, the driven of the insured. The said motor van was insured under policy of insurance No. M/76/CV/0403, by the insurers, the defendants herein, for period 27 October 1977, and the accident in which the plaintiff was injured took place on 18 August 1977. The plaintiff sued the driver and the owners (insured) of the motor van, but withdrew the action against the owners later, for damages for injuries sustained by her, *vide* Seremban High Court Civil Suit No. 231 of 1980, and obtained judgment in her favour against the authorised driver in the sum of RM48,240 as general and special damages and RM6,219.50 as party and party costs. Due notice of commencement of proceedings against the driver in C.S. No. 231 of 1980 had been given to the insurers, the defendants herein.

The defendants as insurers refused to pay the judgment sum above-mentioned to the plaintiff and the plaintiff is now suing the defendants as insurers to recover the judgment sum under s. 80 of the Road Traffic Ordinance, 1958.

It is the contention of the plaintiff that the policy of insurance covered the authorised driver under s. II (2) of the policy. The plaintiff at the material time was travelling as a passenger in the said motor van by reason of or in pursuance of her contract of employment and she had properly obtained the judgment against the authorised driver. The defendants as insurers, she claimed, are liable to satisfy the judgment under s. 80(1) of the Road Traffic Ordinance, 1958.

The defendants (insurers) on the other hand contended that the plaintiff was being carried in the said motor van in the course of her employment and as such the defendants were not liable to indemnify the owners (insured) for the judgment obtained by the plaintiff against the authorised driver, relying on Exception (ii) to s. II of the relevant policy. For convenience, Exception (ii) to s. II reads:

> The Corporation shall not be liable in respect of
>
> (i) x x x
>
> (ii) death of or bodily injury to any persons in the employment of the insured arising out of and in the course of such employment,

It is also the contention of the defendants that as the plaintiff was not a passenger carried by reason of or in pursuance of her contract of employment, the plaintiff did not fall within the Exception (iii) of Exceptions to s. II and therefore they were not liable to indemnify the plaintiff on the judgment obtained against the authorised driver.

Exception (iii) of Exceptions to s. II of the policy reads:

> The Corporation shall not be liable in respect of
>
> (i) x x x
>
> (ii) x x x
>
> (iii) death of or bodily injury to any person (**other than a passenger carried by reason of or in pursuance of a contract of employment**) being carried in, or upon, or entering, or getting on to, or alighting from the Motor Vehicle at the time of the occurance of the event out of which any claim arises
> (the underlining is mine)

Finally the defendants contended that the plaintiff was injured during the course of her employment and therefore the claim falls within Exception (ii) of Executions to s. II of the policy of insurance.

One thing is clear from the evidence, that is, the plaintiff at the time of the accident, was travelling on the said motor van as a passenger **by reason of or in pursuance of her contract of employment**. She did not hitch a ride or get a lift on the said motor van, as her employers (the "owners"/insured) had provided the transport to her and the other employees to their place of work by the said motor van which was driven by the authorised driver. As such the injuries the plaintiff sustained were not "**arising out of and in the course of her employment,**" and not caught by Exception (ii) of Exceptions to s. II of the relevant policy of insurance.

The cases of *St. Helens Colliery Company Ltd,. v. Hewitson* [1924] AC 59 and *McSteen v. McCarthy* [1952] NI 33 IR; Digest Vol. 29 p. 585 para. 5152 are in point.

It is clear from the evidence that the plaintiff sustained the injuries while she was travelling as a passenger in the said motor van "by reason of her in pursuance of her contract of employment". As such the plaintiff's claim falls within the words in the brackets in Exception (iii) of Exceptions to s. II of the policy the plaintiff who was sitting next to the driver, of insurance.

Further, at the hearing of this Suit, PW2 a co-worker of the plaintiff testified to the effect that when the said motor van stopped, came out of the van and then she was injured. If it is the contention that the plaintiff was injured by the negligence of the authorised driver while she was not a passenger in the motor van, then the plaintiff's claim comes within the meaning of a "third party" which makes the insurers (the defendants here) still liable.

I therefore hold that the defendants (insurers) are liable on the policy of insurance to the plaintiff on her claim.

Also found at [1988] 2 CLJ 847